

House File 74

HOUSE FILE _____
BY JOCHUM

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act relating to the regulation of wetlands, mitigation of
2 adverse impacts to wetlands, providing penalties and fees, and
3 making an appropriation.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1680HH 82
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1 1 Section 1. NEW SECTION. 456B.21 SHORT TITLE.
1 2 This subchapter shall be known and may be cited as the
1 3 "Iowa Wetlands Protection Act".
1 4 Sec. 2. NEW SECTION. 456B.22 DEFINITIONS.
1 5 As used in this subchapter, unless the context otherwise
1 6 requires:
1 7 1. "Creation" means the establishment of a wetland where
1 8 one did not formerly exist and involves wetland construction
1 9 on nonhydric soils.
1 10 2. "Enhancement" means activities conducted in an existing
1 11 wetland to improve or repair its existing or natural wetland
1 12 functions and values.
1 13 3. "Fill material" means any material free of toxic
1 14 contaminants, other than trace amounts, used to fill an
1 15 aquatic area, replace an aquatic area with dry land, or change
1 16 the bottom elevation of a wetland for any purpose. "Fill
1 17 material" does not include any of the following:
1 18 a. Material resulting from normal farming, silviculture,
1 19 or ranching activities, such as plowing, cultivating, seeding,
1 20 or harvesting for the production of food, fiber, or forest
1 21 products.
1 22 b. Material used to maintain existing structures,
1 23 including emergency reconstruction of recently damaged parts
1 24 of serviceable structures such as dikes, dams, levees,
1 25 breakwaters, causeways, or bridge abutments or approaches, or
1 26 transportation structures.
1 27 4. "Filling" means adding fill material into a wetland for
1 28 the purpose of creating an upland, changing the bottom
1 29 elevation of the wetland, or creating impoundments of water.
1 30 5. "Function" means properties of wetlands that provide
1 31 ecological or economic benefits including but not limited to
1 32 flood flow alteration, groundwater recharge, groundwater
1 33 discharge, sediment and toxicant retention, nutrient removal
1 34 or transformation, wildlife and aquatic diversity and
1 35 abundance, uniqueness, and historical and recreational value.
2 1 These functions can be evaluated using the wetland evaluation
2 2 technique developed by the United States army corps of
2 3 engineers or a similar technique developed by the department.
2 4 6. "Isolated wetlands" means wetlands that meet all of the
2 5 following criteria:
2 6 a. The wetlands are inundated or saturated by surface or
2 7 groundwater at a frequency and duration sufficient to support,
2 8 and that under normal circumstances do support, a prevalence
2 9 of vegetation typically adapted for life in saturated soil
2 10 conditions and possess hydrophytic vegetation, hydric soils,
2 11 and wetland hydrology.
2 12 b. The wetlands do not have a surface water connection to
2 13 United States navigable waterways or as otherwise defined by
2 14 the United States army corps of engineers.
2 15 c. The wetlands are delineated in accordance with current
2 16 delineation specifications of the United States army corps of
2 17 engineers.
2 18 d. The wetlands include but are not limited to marshes,
2 19 bogs, fens, and isolated ponds.

2 20 7. "Isolated wetland permit" means a permit obtained from
2 21 the department to engage in a regulated activity in an
2 22 isolated wetland.

2 23 8. "Mitigation" means applying the following actions in
2 24 order of acceptability and preference to the department:
2 25 a. Avoiding an adverse impact.
2 26 b. Where adverse impacts cannot be avoided, minimizing an
2 27 adverse impact.
2 28 c. Where adverse impacts cannot be avoided or minimized,
2 29 rectifying an adverse impact by repairing, rehabilitating, or
2 30 restoring the affected environment.
2 31 d. Where adverse impacts cannot be avoided, minimized, or
2 32 rectified, compensating for the adverse impact by replacing or
2 33 providing substitute resources or environments of equal or
2 34 greater quality and functions.

2 35 9. "Mitigation bank service area" means the designated
3 1 area where a mitigation bank provides appropriate compensation
3 2 for impacts to wetlands and other aquatic resources and that
3 3 is designated as such in accordance with the process
3 4 established in the federal guidance for the establishment,
3 5 use, and operation of mitigation banks.

3 6 10. "Off-site mitigation" means wetland restoration,
3 7 creation, enhancement, or preservation occurring farther than
3 8 one mile from a project boundary, but within the same
3 9 watershed.

3 10 11. "On-site mitigation" means wetland restoration,
3 11 creation, enhancement, or preservation occurring within and
3 12 not more than one mile from the project boundary, and within
3 13 the same watershed.

3 14 12. "Practicable" means available and capable of being
3 15 executed with existing technology and without significant
3 16 adverse effect on the economic feasibility of the project in
3 17 light of the overall project purposes and in consideration of
3 18 the relative environmental benefit. The department shall have
3 19 the final determination as to what measures are practicable.

3 20 13. "Preservation" means the protection of ecologically
3 21 important wetlands in perpetuity through the implementation of
3 22 appropriate legal mechanisms to prevent harm to the wetlands.
3 23 "Preservation" may include protection of adjacent upland areas
3 24 as necessary to ensure protection of a wetland.

3 25 14. "Restoration" means the reestablishment of a
3 26 previously existing wetland at a site where the wetland has
3 27 ceased to exist.

3 28 15. "Watershed" means a common surface drainage area.
3 29 "Watershed" is limited to those parts of the cataloging units
3 30 that geographically lie within the borders of this state.

3 31 16. "Wetlands" means those areas that are inundated or
3 32 saturated by surface or groundwater at a frequency and
3 33 duration that are sufficient to support, and that under normal
3 34 circumstances do support, a prevalence of vegetation typically
3 35 adapted for life in saturated soil conditions. "Wetlands"
4 1 includes swamps, marshes, bogs, and similar areas that are
4 2 delineated in accordance with the United States army corps of
4 3 engineers.

4 4 17. "Wetland mitigation bank" means a site where wetlands
4 5 have been restored, created, enhanced, or, in exceptional
4 6 circumstances, preserved expressly for the purpose of
4 7 providing mitigation for impacts to wetlands and that has been
4 8 approved in accordance with the process established in the
4 9 federal guidelines for the establishment, use, and operation
4 10 of mitigation banks.

4 11 Sec. 3. NEW SECTION. 456B.23 PERMITTING GUIDELINES.

4 12 1. A proposed filling of an isolated wetland shall require
4 13 an isolated wetland permit and be subject to review
4 14 requirements established under this subchapter.

4 15 2. A review shall require the submission of a preactivity
4 16 notice that includes an application containing an acceptable
4 17 wetland delineation, a wetland categorization, a description
4 18 of the project, a description of the acreage of the isolated
4 19 wetland that will be subject to filling, site photographs, and
4 20 a mitigation proposal for the impact to the isolated wetland.

4 21 3. The applicant shall conduct mitigation for the proposed
4 22 filling of an isolated wetland that is subject to review.
4 23 With the approval of the director, the applicant shall conduct
4 24 either on-site mitigation, mitigation at a wetland mitigation
4 25 bank within the same United States army corps of engineers
4 26 district as the location of the proposed filling of the
4 27 isolated wetland, or off-site mitigation.

4 28 4. A person that has submitted a preactivity notice shall
4 29 complete the filling within two years after the end of the
4 30 thirty-day period following the receipt of the preactivity

notice by the department. If the filling is not completed within that two-year period, the person shall submit a new preactivity notice.

Sec. 4. NEW SECTION. 456B.24 PERMITS.

1. A review for an isolated wetland permit shall require all of the following:

a. All of the information required to be submitted with a preactivity notice.

b. A full antidegradation review.

c. The submission of information indicating whether high-quality waters are to be avoided by the proposed filling of the isolated wetland.

2. The department shall issue or deny an isolated wetland permit not later than one hundred eighty days after the receipt of an application for the permit. The department shall not issue an isolated wetland permit unless the applicant has demonstrated that the proposed filling will not prevent or interfere with the attainment or maintenance of applicable state water quality standards.

3. a. The department may deny an isolated wetland permit if the department determines that the proposed filling of the isolated wetland will result in an adverse short-term or long-term impact on water quality in the state.

b. The department may impose any practicable terms and conditions on an isolated wetland permit to ensure adequate protection of water quality in the state.

c. Prior to the issuance of an isolated wetland permit, or prior to, during, or after the filling of the isolated wetland that is the subject of the permit, the department may require the applicant to perform various environmental quality tests, including, without limitation, chemical analyses of water, to sediment, or fill material and bioassays, in order to ensure adequate protection of water quality.

4. Mitigation for the proposed filling of an isolated wetland that is subject to review shall occur in the following order:

a. Practicable on-site mitigation.

b. Reasonably identifiable, available, and practicable off-site mitigation within the same watershed.

c. If the proposed filling of the isolated wetland will take place within a mitigation bank service area, within that mitigation bank service area. If there is a significant ecological reason that the mitigation location should not be limited to the watershed in which the isolated wetland is located and if the proposed mitigation will result in a substantially greater ecological benefit, in a watershed that is adjacent to the watershed in which the isolated wetland is located.

Sec. 5. NEW SECTION. 456B.25 WETLAND MITIGATION BANKS.

1. The department shall establish a list of approved wetland mitigation banks. In establishing the list, the department shall give preference to wetland mitigation banks that are comprised of areas involving the restoration of previously existing wetlands. The list established under this section shall not exclude state or local agencies from developing wetland mitigation banks.

2. The department may establish and operate a wetland mitigation bank for use by any individual or entity, including any state agency or department, for mitigation purposes in accordance with this subchapter.

3. By December 31 of each year, the director shall issue an annual report to the general assembly on the total acreage of isolated wetlands that were subject to filling during the preceding year and the total acreage of isolated wetlands restored, created, enhanced, or preserved through mitigation that same year as a result of isolated wetland permits.

Sec. 6. NEW SECTION. 456B.26 PERMIT REVIEW.

1. The director shall do all of the following in relation to isolated wetland permits:

a. Prescribe the form of the application for an isolated wetland permit.

b. Provide an explanation to an isolated wetland permit applicant for the proposed denial of the application.

c. Within fifteen business days after the receipt of an application, the director shall notify the applicant if the application is complete. If the application is not complete, the director shall include in the notice an itemized list of the information or materials that are necessary to complete the application. Time periods specified in this subchapter shall not apply until the application is determined by the director to be complete. If the applicant fails to provide

7 7 information or materials that are necessary to complete the
7 8 application within sixty days after the receipt of the
7 9 application, the director may return the incomplete
7 10 application to the applicant and take no further action on the
7 11 application.

7 12 d. Except as provided in subsection 2, the director shall
7 13 publish notice of the receipt of a complete application in a
7 14 newspaper of general circulation in the county housing the
7 15 isolated wetland proposed to be filled. The director shall
7 16 accept comments concerning the application and requests for a
7 17 public hearing concerning the application for not more than
7 18 thirty days following the publication of notice.

7 19 2. If a public hearing is requested during the thirty-day
7 20 comment period and the director determines there is
7 21 significant public interest, the department shall conduct a
7 22 public hearing concerning the application. Notice of the
7 23 public hearing shall be published not later than thirty days
7 24 prior to the date of the hearing in a newspaper of general
7 25 circulation in the county in which the proposed filling of the
7 26 isolated wetland that is the subject of the application is to
7 27 take place. If a public hearing is requested concerning an
7 28 application, the department shall accept comments concerning
7 29 the application until fifteen business days after the public
7 30 hearing. A public hearing conducted under this section shall
7 31 take place not later than ninety days after the director
7 32 notifies the applicant that the application is complete.

7 33 Sec. 7. NEW SECTION. 456B.27 MITIGATION.

7 34 1. The department may require mitigation for impacts to
7 35 isolated wetlands to replace or compensate for the long-term
8 1 and short-term economic, environmental, and natural resource
8 2 benefits that would be lost by the proposed regulated
8 3 activity.

8 4 2. Mitigation for impacts to isolated wetlands shall be
8 5 conducted in accordance with the following ratios:

8 6 a. For isolated wetlands, other than forested isolated
8 7 wetlands, mitigation located at an approved wetland mitigation
8 8 bank shall be conducted at a rate of two times the size of the
8 9 isolated wetland area being impacted.

8 10 b. For forested isolated wetlands, mitigation located at
8 11 an approved wetland mitigation bank shall be conducted at a
8 12 rate of two and one-half times the size of the isolated
8 13 wetland area being impacted.

8 14 3. Mitigation that involves the enhancement or
8 15 preservation of existing isolated wetlands shall be calculated
8 16 and performed in accordance with existing state and federal
8 17 laws and regulations for wetlands.

8 18 4. An applicant shall demonstrate that the mitigation site
8 19 will be protected in perpetuity and that appropriate
8 20 practicable management measures are, or will be, in place to
8 21 restrict harmful activities that jeopardize the mitigation.

8 22 Sec. 8. NEW SECTION. 456B.28 EXEMPTIONS.

8 23 1. The requirement for an isolated wetlands permit does
8 24 not apply to a discharge that is the result of any of the
8 25 following activities:

8 26 a. Normal farming, silviculture, or ranching activities.

8 27 b. Maintenance, emergency repair, or reconstruction of
8 28 damaged parts of structures that are in use in the waters of
8 29 the state.

8 30 c. Construction or maintenance of farm ponds, stock ponds,
8 31 or irrigation ditches.

8 32 d. Maintenance of drainage ditches.

8 33 e. Construction or maintenance of farm roads, forest

8 34 roads, or temporary mining roads that is performed in
8 35 accordance with best management practices, as determined by
9 1 the department, to ensure all of the following:

9 2 (1) That the flow and circulation patterns and chemical
9 3 and biological characteristics of the affected wetland are not
9 4 impaired.

9 5 (2) That the reach of the affected wetland is not reduced.

9 6 (3) That any adverse effect on the aquatic environment of
9 7 the affected wetland is minimized to the degree required by
9 8 the department.

9 9 2. A discharge that would be exempt under subsection 1 is
9 10 subject to the permit requirement if the discharge is
9 11 incidental to any of the following activities:

9 12 a. An activity that has as its purpose bringing a wetland,
9 13 or part of a wetland, into a use for which it was not
9 14 previously subject.

9 15 b. An activity that may impair the flow or circulation of
9 16 any waters of the state.

9 17 c. An activity that may reduce the reach of any waters of

9 18 the state.

9 19 Sec. 9. NEW SECTION. 456B.29 FEES.

9 20 1. The department is authorized to adopt and enforce a fee

9 21 schedule for purposes of this subchapter. The amount of fees

9 22 collected annually must not exceed the cost of administering

9 23 the provisions of this subchapter. The fees collected

9 24 pursuant to this subchapter are appropriated to the department

9 25 for purposes of administering this subchapter.

9 26 2. If a person conducts any activities for which an

9 27 isolated wetland permit is required under this subchapter

9 28 without first obtaining such a permit, in addition to

9 29 penalties outlined in section 456B.31, the person shall pay

9 30 twice the amount of the application and review fees that the

9 31 person otherwise would have been required to pay under this

9 32 subchapter.

9 33 Sec. 10. NEW SECTION. 456B.30 INSPECTION AUTHORITY.

9 34 For purposes of enforcing this subchapter, any employee or

9 35 other representative of the department, upon presenting the

10 1 employee's or representative's credentials, may do any of the

10 2 following:

10 3 1. Enter and inspect any property on which is located a

10 4 wetland, or part of a wetland, that is subject to a permit

10 5 issued under this subchapter.

10 6 2. Enter and inspect any property to investigate a

10 7 discharge of dredged or fill material.

10 8 3. Gain access to and inspect any records that the

10 9 department requires the holder of the isolated wetland permit

10 10 to keep.

10 11 Sec. 11. NEW SECTION. 456B.31 JURISDICTION AND

10 12 PENALTIES.

10 13 1. A person shall not conduct a regulated activity within

10 14 an isolated wetland unless an isolated wetlands permit has

10 15 been issued to the person.

10 16 2. The district court of the county in which the affected

10 17 isolated wetlands area or any part thereof lies shall have

10 18 jurisdiction to restrain a violation of this subchapter upon

10 19 petition of the department, the attorney general, or any

10 20 person adversely affected. In the event the affected isolated

10 21 wetlands area lies in more than one county, jurisdiction shall

10 22 be in the district court of any county in which any part of

10 23 the area lies. In the same action the district court having

10 24 jurisdiction over the affected area may require such area to

10 25 be restored to its original condition. In the alternative,

10 26 the department may complete the restoration at the expense of

10 27 the person altering the area in which case an action for

10 28 recovery of the amount expended may be brought in any court

10 29 having jurisdiction to restrain a violation. A bond shall not

10 30 be required as a condition of the granting of a temporary

10 31 restraining order under this section, except that the court

10 32 may in its discretion require that a reasonable bond be posted

10 33 by any person requesting the court to restrain a violation of

10 34 this subchapter.

10 35 3. A person violating any provision of this subchapter

11 1 involving more than five square yards of isolated wetlands is

11 2 guilty of a serious misdemeanor.

11 3 4. A person violating any provision of this subchapter

11 4 involving five square yards or less of isolated wetlands is

11 5 guilty of a simple misdemeanor.

11 6 5. A person who is determined to be in violation of any

11 7 provision of this subchapter by the department shall be liable

11 8 for, and may be assessed by the department for, a civil

11 9 penalty of not less than one hundred dollars nor more than one

11 10 thousand dollars per day of violation. Whenever the

11 11 department determines that any person is in violation of any

11 12 permit, regulation, standard, or requirement under this

11 13 subchapter, the department may issue an order requiring such

11 14 person to comply with such permit, regulation, standard, or

11 15 requirement, including an order requiring restoration when

11 16 deemed environmentally appropriate by the department. In

11 17 addition, the department may bring a civil enforcement action

11 18 under this section as well as seeking appropriate injunctive

11 19 relief.

11 20 Sec. 12. NEW SECTION. 456B.32 RULES.

11 21 The department shall adopt rules pursuant to chapter 17A

11 22 necessary to implement this subchapter.

11 23 Sec. 13. Section 427.1, subsection 23, Code 2007, is

11 24 amended to read as follows:

11 25 23. ~~NATIVE PRAIRIE AND WETLAND~~. Land designated as native

11 26 prairie ~~or land designated as a protected wetland by the~~

11 27 department of natural resources ~~pursuant to section 456B.12.~~

11 28 Application for the exemption shall be made on forms provided

11 29 by the department of revenue. ~~Land designated as a protected~~
~~11 30 wetland shall be assessed at a value equal to the average~~
~~11 31 value of the land where the wetland is located and which is~~
~~11 32 owned by the person granted the exemption.~~ The application
11 33 forms shall be filed with the assessing authority not later
11 34 than the first of February of the year for which the exemption
11 35 is requested. The application must be accompanied by an
12 1 affidavit signed by the applicant that if the exemption is
12 2 granted, the property will not be used for economic gain
12 3 during the assessment year in which the exemption is granted.
12 4 If the property is used for economic gain during the
12 5 assessment year in which the exemption is granted, the
12 6 property shall lose its tax exemption and shall be taxed at
12 7 the rate levied by the county for the fiscal year beginning in
12 8 that assessment year. The first annual application shall be
12 9 accompanied by a certificate from the department of natural
12 10 resources stating that the land is native prairie ~~or protected~~
~~12 11 wetland.~~ The department of natural resources shall issue a
12 12 certificate for the native prairie exemption if the department
12 13 finds that the land has never been cultivated, is unimproved,
12 14 is primarily a mixture of warm season grasses interspersed
12 15 with flowering plants, and meets the other criteria
12 16 established by the natural resource commission for native
12 17 prairie. ~~The department of natural resources shall issue a~~
~~12 18 certificate for the wetland exemption if the department finds~~
~~12 19 the land is a protected wetland, as defined under section~~
~~12 20 456B.1, or if the wetland was previously drained and cropped~~
~~12 21 but has been restored under a nonpermanent restoration~~
~~12 22 agreement with the department or other county, state, or~~
~~12 23 federal agency or private conservation group.~~ A taxpayer may
12 24 seek judicial review of a decision of the department according
12 25 to chapter 17A. The natural resource commission shall adopt
12 26 rules to implement this subsection.

12 27 The assessing authority each year may submit to the
12 28 department a claim for reimbursement of tax revenue lost from
12 29 the exemption. ~~Upon receipt of the claim, the department~~
~~12 30 shall reimburse the assessing authority an amount equal to the~~
~~12 31 lost tax revenue based on the value of the protected wetland~~
~~12 32 as assessed by the authority, unless the department reimburses~~
~~12 33 the authority based upon a departmental assessment of the~~
~~12 34 protected wetland.~~ The authority may contest the department's
12 35 assessment as provided in chapter 17A. ~~The department is not~~
~~13 1 required to honor a claim submitted more than sixty days after~~
~~13 2 the authority has assessed land where the protected wetland is~~
~~13 3 located and which is owned by the person granted the~~
~~13 4 exemption.~~

13 5 Sec. 14. Section 456B.1, subsections 4 and 5, Code 2007,
13 6 are amended by striking the subsections.

13 7 Sec. 15. Section 459.102, subsection 21, Code 2007, is
13 8 amended to read as follows:

13 9 21. "Designated wetland" means land designated as a
13 10 protected wetland by the United States department of the
13 11 interior or the department of natural resources, ~~including but~~
~~13 12 not limited to a protected wetland as defined in section~~
~~13 13 456B.1, if the land is owned and managed by the federal~~
~~13 14 government or the department of natural resources.~~ However, a
13 15 designated wetland does not include land where an agricultural
13 16 drainage well has been plugged causing a temporary wetland or
13 17 land within a drainage district or levee district.

13 18 Sec. 16. Sections 456B.12, 456B.13, 456B.14, and 654A.16,
13 19 Code 2007, are repealed.

13 20 EXPLANATION

13 21 This bill repeals current statutes relating to the
13 22 inventory and protection of wetlands, makes conforming
13 23 amendments, and replaces them with a comprehensive wetland
13 24 program.

13 25 The bill requires that a proposed filling of an isolated
13 26 wetland requires an isolated wetland permit and subjects the
13 27 filling to a review by the department of natural resources.
13 28 The bill provides that a review shall require the submission
13 29 of a preactivity notice that includes an application. An
13 30 applicant shall conduct mitigation for the proposed filling of
13 31 an isolated wetland that is subject to departmental review.
13 32 The bill provides that a person that has submitted a
13 33 preactivity notice shall complete the filling within two
13 34 years.

13 35 The bill provides that the department shall issue or deny
14 1 an isolated wetland permit not later than 180 days after the
14 2 receipt of an application for the permit. The bill prohibits
14 3 the department from issuing an isolated wetland permit unless
14 4 the applicant has demonstrated that the proposed filling will

14 5 not prevent or interfere with the attainment or maintenance of
14 6 applicable state water quality standards. The bill provides
14 7 that the department may deny an isolated wetland permit if the
14 8 department determines that the proposed filling of the
14 9 isolated wetland will result in an adverse short-term or long=
14 10 term impact on water quality in the state. The bill allows
14 11 the department to impose any practicable terms and conditions
14 12 on an isolated wetland permit to ensure adequate protection of
14 13 water quality in the state. The department may require the
14 14 applicant perform various environmental quality tests in order
14 15 to ensure adequate protection of water quality. The bill
14 16 provides a priority order of locations where mitigation for
14 17 the proposed filling of an isolated wetland that is subject to
14 18 review shall occur.

14 19 The bill requires the department to establish a list of
14 20 approved wetland mitigation banks. "Wetland mitigation bank"
14 21 means a site where wetlands have been restored, created,
14 22 enhanced, or, in exceptional circumstances, preserved
14 23 expressly for the purpose of providing mitigation for impacts
14 24 to wetlands and that has been approved in accordance with the
14 25 process established in the federal guidelines for the
14 26 establishment, use, and operation of mitigation banks.

14 27 The bill requires the director to prescribe the form of the
14 28 application for an isolated wetland permit and provide an
14 29 explanation to an isolated wetland permit applicant for the
14 30 proposed denial of the application. The bill requires the
14 31 director, within 15 business days after the receipt of an
14 32 application, to notify the applicant if the application is
14 33 complete. The bill provides procedures for public hearings
14 34 regarding an isolated wetland permit.

14 35 The bill allows the department to require mitigation for
15 1 impacts to isolated wetlands to replace or compensate for the
15 2 long-term and short-term economic, environmental, and natural
15 3 resource benefits that would be lost by the proposed regulated
15 4 activity. The bill requires an applicant to demonstrate that
15 5 the mitigation site will be protected in perpetuity and that
15 6 appropriate practicable management measures are, or will be,
15 7 in place to restrict harmful activities that jeopardize the
15 8 mitigation.

15 9 The bill provides that the requirement for an isolated
15 10 wetlands permit does not apply to any discharge that is the
15 11 result of normal farming, silviculture, or ranching
15 12 activities; maintenance, emergency repair, or reconstruction
15 13 of damaged parts of structures that are in use in the waters
15 14 of the state; construction or maintenance of farm ponds, stock
15 15 ponds, or irrigation ditches; maintenance of drainage ditches;
15 16 or construction or maintenance of certain roads that is
15 17 performed in accordance with best management practices. The
15 18 bill provides that an exempt discharge is subject to the
15 19 permit requirement if the discharge is incidental to an
15 20 activity that has as its purpose bringing a wetland, or part
15 21 of a wetland, into a use for which it was not previously
15 22 subject, an activity that may impair the flow or circulation
15 23 of any waters of the state, or an activity that may reduce the
15 24 reach of any waters of the state.

15 25 The bill allows the department to adopt and enforce a fee
15 26 schedule. The bill provides that the amount of fees collected
15 27 annually must not exceed the cost of administering the
15 28 provisions of this bill and that the fees are appropriated for
15 29 purposes of administering the provisions. The bill provides
15 30 that if a person conducts any activities for which an isolated
15 31 wetland permit is required without first obtaining such a
15 32 permit, in addition to other penalties, the person shall pay
15 33 twice the amount of the application and review fees that the
15 34 person otherwise would have been required to pay.

15 35 The bill allows any employee or other representative of the
16 1 department, upon presenting the employee's or representative's
16 2 credentials, to enter and inspect any property on which is
16 3 located a wetland, or part of a wetland, that is subject to a
16 4 permit, enter and inspect any property to investigate a
16 5 discharge of dredged or fill material, and gain access to and
16 6 inspect any records that the department requires the holder of
16 7 the isolated wetland permit to keep.

16 8 The bill prohibits a person from conducting a regulated
16 9 activity within an isolated wetland unless an isolated
16 10 wetlands permit has been issued. The bill allows a district
16 11 court having jurisdiction over an affected area to require
16 12 such area to be restored to its original condition. In the
16 13 alternative, the bill allows the department to complete the
16 14 restoration at the expense of the person altering the area in
16 15 which case an action for recovery of the amount expended may

16 16 be brought in any court having jurisdiction to restrain a
16 17 violation.

16 18 The bill provides that a person violating any provision of
16 19 this bill involving more than five square yards of isolated
16 20 wetlands is guilty of a serious misdemeanor. The bill
16 21 provides that a person violating any provision of this bill
16 22 involving five square yards or less of isolated wetlands is
16 23 guilty of a simple misdemeanor. The bill provides that a
16 24 person who is determined to be in violation of any provision
16 25 of this bill shall be assessed a civil penalty of not less
16 26 than \$100 nor more than \$1,000 per day of violation. The bill
16 27 provides that whenever the department determines that any
16 28 person is in violation of any permit, regulation, standard, or
16 29 requirement under the bill, the department may issue an order
16 30 requiring such person to comply with such permit, regulation,
16 31 standard, or requirement, including an order requiring
16 32 restoration when deemed environmentally appropriate by the
16 33 department. The bill provides that, in addition, the
16 34 department may bring a civil enforcement action as well as
16 35 seeking an appropriate injunctive relief.

17 1 LSB 1680HH 82

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